

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
                  LANAI WATER COMPANY, INC.        )  
For Amendment of Its Certificate of)  
Public Convenience and Necessity        )  
Pursuant to Section 269-7.5 to        )  
Provide Non-Potable Water Service        )  
In Manele-Hulopoe, Lana`i, and for        )  
Approval of Rules and Regulations,        )  
And Rates        )  
\_\_\_\_\_)

DOCKET NO. 2008-0322

PROPOSED DECISION AND ORDER

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DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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PROPOSED DECISION AND ORDER

By this Proposed Decision and Order, the commission approves the agreements reached between LANAI WATER COMPANY, INC. ("LWC") and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate")<sup>1</sup> (jointly, the "Parties") in their letter filed jointly on May 29, 2009 ("Settlement Agreement").

Specifically, the commission approves: (1) an amendment to LWC's Certificate of Public Convenience and Necessity ("CPCN") authorizing expansion of LWC's authority to include the provision of non-potable water service in its service area, conditioned on the filing requirement discussed in the Settlement Agreement; (2) the implementation of rates to be charged by LWC as set forth in the Settlement Agreement; (3) LWC's Rules and Regulations as modified by the Consumer Advocate's recommendation with respect to the definition of "Public Utilities Commission," and a

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<sup>1</sup>The Consumer Advocate is an ex officio party to this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

clarifying letter filed by the Parties on June 16, 2009; (4) the disposition of LWC's facility and related plant and equipment from Lanai Holdings, Inc. ("LHI"), LWC's parent company, to LWC under HRS §§ 269-7(a) and 269-19; and (5) the Parties' agreement that LWC will submit all pertinent easements and licenses to the commission for its review, under HRS § 269-19.5, within thirty days of receipt of the commission's final Decision and Order in this docket.

I.

Background

A.

LWC

LWC is a corporation organized and existing under the laws of the State of Hawaii, and is a wholly owned subsidiary of LHI. LWC is a public utility authorized by the commission to provide potable water distribution services to the following five areas on the island of Lanai: Koele, Lanai City, Lanai Airport, Kaunalapu Harbor, and Manele-Hulopoe.<sup>2</sup>

In Docket No. 96-0495, LWC filed an application to amend its CPCN for authority to distribute non-potable water for irrigation purposes and to provide water treatment services in the proposed service territory. At that time, LWC planned to purchase the non-potable water from LHI. LWC and the Consumer Advocate, however, subsequently filed a Stipulation for Withdrawal of Application without Prejudice ("Stipulation") stating:

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<sup>2</sup>The commission granted LWC a CPCN in Decision and Order No. 9791, filed on June 13, 1988, in Docket No. 5972.  
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. . . the express understanding that [LWC] may at anytime hereafter file a new application(s) for approval of amendments to its [CPCN] to authorize it to distribute non potable water for irrigation and to provide wastewater services in Manele-Hulopoe, Lanai.

The commission approved the Stipulation in Order No. 17269, filed on October 6, 1999, and Docket No. 96-0495 was closed.

The record indicates that, although LWC did not receive a CPCN to provide non-potable service, such service has been provided by LHI and subsequently LWC to the area since 1990. LHI currently provides non-potable water to its parent company, Castle & Cooke, principally for the irrigation of Castle & Cooke's golf course, "The Challenge at Manele" ("CAM") located in the Manele Bay resort area. In Docket No. 2007-0232, the commission declared that LHI's non-potable water service to Castle & Cooke, in which LHI and LWC jointly own interest in the facilities that provide non-potable water service, does not render LHI a public utility within the meaning of HRS § 269-1.<sup>3</sup> Non-potable water service is also currently provided to the Manele Homeowners Association, as its master declaration requires that the residential lots and common areas be irrigated exclusively with non-potable water.

LWC is also affiliated with Manele Water Resources, LLC ("MWR"), which became authorized to provide wastewater services in the Manele-Hulopoe area by Decision and Order No. 23295, filed on March 13, 2007, in Docket No. 2006-0166.

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<sup>3</sup>See Decision and Order No. 23687, filed on September 28, 2007, in Docket No. 2007-0232.  
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B.

LWC's Application

On December 26, 2008, LWC filed its application, exhibits, and testimonies ("Application"), requesting that the commission amend LWC's CPCN to allow LWC to own and operate a non-potable water system to distribute non-potable water for irrigation to metered end-users ("Non-Potable Water Service") within the area of Manele-Hulopoe, Lanai, State of Hawaii ("Service Area"). The Application also sought approval of: (a) LWC's proposed Lanai Water Company, Inc. Rules and Regulations Covering the Provision of Non-Potable Water Service ("Rules and Regulations"); (b) initial rates for Non-Potable Water Service; (c) LWC's proposed affiliate transactions; and (d) the waiver of the commission's requirement for audited financial statements and the requirement that LWC state the proposed rate increases in terms of a percent (collectively, "Waiver Requests").

LWC explained that it intends to purchase non-potable water from its parent company, LHI, pursuant to an "Agreement for Sale of Non-Potable Water" ("Purchase Agreement"), attached as Exhibit B to the Application. Subject to the commission's approval of the proposed affiliate transactions, LWC intends to be the joint owner of an undivided interest in LHI's constructed non-potable water system consisting of the non-potable water storage, transmission, and distribution systems, and other equipment and plant necessary to provide the Non-Potable Water

Service (collectively referred to as the "Facility").<sup>4</sup> LWC stated that it will be the sole and principal provider of regulated Non-Potable Water Service in the proposed Service Area.

LWC stated that it does not currently charge for Non-Potable Water Services. In the Application, it proposed to charge the following rates:

Table No. 1 Service Flat Rate Charge

Meter Size (Inches in Decimal Format)	Rate Every Two Months
0.625	\$5.00
0.750	\$5.00
1.000	\$10.00
1.500	\$10.00
2.000	\$25.00
3.000	\$50.00
4.000	\$75.00
6.000	\$150.00
8.000	\$250.00
10.000	\$250.00

Table No. 2 Usage Charge

User Charge (2-month billing cycle)	Proposed Rate (per 1,000 gallons)
<u>Single Family ("SF")</u>	
Tier 1 < 1,000 per day per lot	\$5.81
Tier 2 > 1,000 & < 2,500 per day per lot	\$7.55
Tier 3 > 2,500 per day per lot	\$9.30
<u>Multi Family ("MF") AOA</u>	
Tier 1 < 1,000 per day per unit	\$5.81
Tier 2 > 1,000 & < 2,500 per day per unit	\$7.55
Tier 3 > 2,500 per day per unit	\$9.30
<u>Home Owners' Association ("HOA")</u>	
Tier 1 < 1,000 per day per acre	\$5.81
Tier 2 > 1,000 & < 2,500 per day per acre	\$7.55
Tier 3 > 2,500 per day per acre	\$9.30
<u>All Other</u>	
Tier 1 < 1,000 per day per acre	\$5.81
Tier 2 > 1,000 & < 2,500 per day per acre	\$7.55
Tier 3 > 2,500 per day per acre	\$9.30

<sup>4</sup>LWC attached a copy of the Shared Asset Contribution Agreement as Exhibit C to the Application.  
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According to LWC, its proposed rates are designed to partially recover the costs of providing the proposed Non-Potable Water Service; however, if the actual operations do not provide sufficient revenues to cover the operating expenses, the additional funds needed to finance LWC's operations will be provided by one or more of LWC's affiliates. As stated by LWC:

Q. Will the Applicant "break-even" if the rates are approved?

A. No, under the proposed rates the Applicant anticipates it will incur a net operating loss for the test year period ending on December 31, 2009.

Q. How will the Applicant's losses, if any, be covered?

A. The Applicant's affiliates will advance funds to cover such losses.<sup>5</sup>

LWC has further determined not to seek establishment of a rate base for ratemaking purposes in this case as LWC is seeking only partial recovery of its operating expenses at this time. LWC stated, though, that it may seek rate base treatment for the Facility and plant additions in a future rate case.

As set forth above, LWC requested the commission's approval to transfer an undivided interest in the Facility from LHI to LWC under the terms of the Shared Asset Contribution Agreement, and purchase bulk deliveries of non-potable water from LHI through the Purchase Agreement. In addition, to the extent applicable under HRS § 269-19.5, which regulates certain transactions between a utility and its affiliates, LWC requested commission approval of any easements and licenses to use the real

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<sup>5</sup>LWC T-1, Testimony of Steven Bumbar (Senior Vice President-General Manager, Castle & Cooke Resorts, LLC), at 6.  
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property of its affiliates to provide the Non-Potable Water Service.

LWC served copies of its Application on the Consumer Advocate. The Consumer Advocate did not object to the completeness of LWC's Application, or to LWC's Waiver Requests. By order issued on February 5, 2009, the commission ruled that the filing date of LWC's complete Application is December 26, 2008.<sup>6</sup> In addition, the commission granted LWC's Waiver Requests, and directed the Parties to file a stipulated procedural order for the commission's review and approval within fourteen days of the commission's order addressing intervention or participation without intervention; or if no intervention motions are filed, within seven days of the deadline for intervention.

C.

Public Hearing

On March 12, 2009, the commission held a public hearing on the Application at Lanai High and Elementary School in Lanai City, Hawaii, pursuant to HRS §§ 269-12(c) and 269-16(f)(2).<sup>7</sup> At the public hearing, LWC's representatives and the Consumer Advocate orally testified and submitted written comments. Several other individuals also testified in person. In addition, the commission received numerous written comments from customers in the proposed Service Area. In general, the

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<sup>6</sup>See Order Granting Waiver Requests and Other Initial Matters, filed on February 5, 2009.

<sup>7</sup>The commission published notice of the public hearing statewide in various newspapers, on February 19, and March 5 and 11, 2009, in accordance with HRS §§ 1-28.5 and 269-16(c).



customers who provided oral and written comments to the commission opposed or expressed concerns with LWC's proposed rates, including the fairness of the purchase price of non-potable water from LHI. Additional concerns related to the quality of the non-potable water, leaks, accuracy of meters, and the reliability of the service provided. After all individuals were given an opportunity to present testimony, the commission closed the public hearing.

D.

Stipulated Issues

The Parties submitted a proposed Stipulated Procedural Order on April 3, 2009, which was approved by the commission on April 29, 2009. As set forth in the Stipulated Procedural Order, the issues in this docket are:

1. Is LWC fit, willing, and able to properly perform the non-potable water service proposed in the Application and to conform to the terms, conditions and rules adopted by the commission regarding said service?
2. Is the proposed service set forth in the Application required, or will said service be required, by the present or future public convenience and necessity?
3. Are LWC's proposed rates, charges, and tariff rules and regulations for the proposed service in the Application just and reasonable?
  - a. Are the revenue forecasts for the test year January 1, 2009 to December 31, 2009, for the proposed rates reasonable?
  - b. Are the projected operating expenses for the test year January 1, 2009 to December 31, 2009, reasonable?

4. Whether LWC's request to transfer an undivided interest in the Facility and related plant and equipment from LHI to LWC under the terms set forth in the Shared Asset Contribution Agreement reasonable and should be approved?
5. If the commission approves the Application:
  - a. pursuant to HRS § 269-19.5(g), whether LWC's purchase of bulk deliveries of non-potable water through the Purchase Agreement is reasonable and should be approved; and
  - b. if applicable, pursuant to HRS § 269-19.5(c), whether LWC's request to obtain easements and licenses to use the real property of its affiliates to provide utility services should be approved?

E.

Discovery

In the Stipulated Procedural Order, the Parties also agreed to a schedule for discovery. Pursuant to this schedule, the Consumer Advocate filed its first Information Requests ("IRs") to LWC on April 21, 2009; LWC filed its answers to those IRs on May 1, 2009.

F.

Consumer Advocate's Statement of Position

Based on its review of the Application, exhibits, testimony, and responses to IRs, on May 15, 2009, the Consumer Advocate filed its Statement of Position ("Consumer Advocate's SOP"), in which it: (1) stated that it does not object to the

commission approving LWC's request for an expansion of its CPCN to provide Non-Potable Water Service with the conditions set forth in Section II of the Consumer Advocate's SOP; (2) stated that it does not object to the commission's approval of the affiliate transactions requested by LWC; (3) expressed certain "concerns" it had regarding LWC's Rules and Regulations; and (4) recommended that the commission authorize the rates proposed by the Consumer Advocate in Section II of the Consumer Advocate's SOP.

G.

LWC's Reply Statement of Position

On May 22, 2009, LWC filed a Reply Statement of Position ("LWC's Reply SOP"), in which it: (1) clarified a statement the Consumer Advocate made in its SOP regarding LWC's financial fitness by addressing a blanket mortgage that presently encumbers lands of LWC's affiliates; (2) provided additional information regarding the capacity of LWC's non-potable water system to address concerns raised in the Consumer Advocate's SOP; (3) agreed to the Consumer Advocate's recommendation that LWC report to the commission on an annual basis instances where non-potable water service is unavailable for a period longer than twenty-four hours; (4) stated, for purposes of expediting the proceeding, that it did not object to the Consumer Advocate's recommendations regarding proposed rates, however, LWC specifically reserved the right to seek different treatment in subsequent proceedings; (5) agreed with the Consumer Advocate's

recommendation to add a definition for the "Public Utilities Commission" to LWC's proposed Rules and Regulations; (6) provided additional information regarding why LWC is unable to accept responsibility to maintain pressure in its non-potable water system to address concerns raised in the Consumer Advocate's SOP; (7) agreed to submit all pertinent easements and licenses to the commission for its review within thirty days of receipt of the commission's order approving the Application; and (8) agreed to annual reporting with the commission and the Consumer Advocate of: (a) a summary of complaints received by LWC; (b) a summary of service interruptions longer than twenty-four hours; and (c) any updates to actions that LWC plans to take or has taken to address the concerns expressed in the public hearing (i.e., quality of the non-potable water, leakage, meter inaccuracies, reliability of LWC's system, and accurate identification of customers' meters).

H.

HRS § 269-16(f)

As a public utility with annual gross revenues of less than \$2 million, LWC filed its Application in accordance with HRS § 269-16(f), which streamlines the rate review process for small public utilities with annual gross revenues of less than \$2 million.<sup>8</sup> Pursuant to HRS § 269-16(f)(3), the commission must make every effort to issue its Proposed Decision and Order within

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<sup>8</sup>The commission treats LWC's request to establish initial rates as a request for a rate increase under HRS § 269-16(f), consistent with In re. Manele Water Resources, LLC, Docket No. 2006-0166.

six months from the filing date of LWC's complete Application, "provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene." HRS § 269-16(f)(3).

The commission timely issues this Proposed Decision and Order, in accordance with HRS § 269-16(f)(3).<sup>9</sup>

## II.

### Discussion

On May 29, 2009, the Parties jointly filed their Settlement Agreement, which reflects the Parties' global settlement of all the issues under HAR § 6-61-35. In reaching their global agreement, the Parties note:

1. Their agreements are for the purpose of simplifying and expediting the proceeding, and represent a negotiated compromise of the matters agreed upon, and the consequences of such agreements shall be limited to the matters agreed to in the Settlement Agreement.
2. They expressly reserve their right to take different positions regarding the matters agreed to in the Settlement Agreement in other proceedings.
3. They agree that the recommendations in the Settlement Agreement replace and supersede the other recommendations in the Consumer Advocate's SOP and LWC's Reply SOP.
4. The Parties agree that there are no remaining contested issues for purposes of settlement and that this docket is ready for decision-making by the commission.

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<sup>9</sup>As discussed above, the commission ruled that the date of LWC's completed Application was December 26, 2008. Thus, the deadline for the commission to issue its Proposed Decision and Order is June 26, 2009.

The Settlement Agreement is subject to the commission's review and approval, and the commission is not bound by it. In this regard, it is well-settled that an agreement between the parties in a rate case cannot bind the commission, as the commission has an independent obligation to set fair and just rates and arrive at its own conclusion. See In re Hawaiian Elec. Co., Inc., 5 Haw. App. 445, 698 P.2d 304 (1985). The commission will review the justness and reasonableness of the Parties' Settlement Agreement, taken as a whole.

A.

LWC's Request for a CPCN

In determining whether LWC should be allowed to amend its CPCN, the commission considers the factors set forth in HRS § 269-7.5(c), which states:

A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity[.] [Emphasis added.]

Ability of LWC to Provide the Non-Potable Water Service

In assessing the ability of LWC to provide the Non-Potable Water Service,<sup>10</sup> the Consumer Advocate first noted in its SOP that: (1) unlike public water systems for potable water, it does not appear that there are operator certification rules that apply directly to the operation of non-potable water systems; (2) nevertheless, John Studdart, who is responsible for the maintenance and operation of the transport and delivery system and engineering for the distribution of the non-potable water, holds a Grade 1 Water System Operator Certification; and (3) LWC and LHI currently operate LWC's potable water system and LWC has been operating the existing non-potable water systems for some time. Based on the foregoing, the Consumer Advocate concluded that LWC "should possess the technical expertise needed to continue operating its non-potable water system."<sup>11</sup>

With respect to the capacity of LWC's physical facilities, the Consumer Advocate recommended that LWC: (1) provide the information to assess the capacity of the system, which includes the system upon which LWC relies as the source of the non-potable water; and (2) report the occurrences of service interruptions lasting longer than a twenty-four hour period.<sup>12</sup>

In response to the Consumer Advocate's concerns, LWC provided additional information in its Reply SOP to show that:

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<sup>10</sup>The Consumer Advocate assumed that LWC is willing to provide the proposed service by its filing of the instant Application. See Consumer Advocate's SOP at 6 n.8.

<sup>11</sup>Consumer Advocate's SOP at 10.

<sup>12</sup>See id. at 12.

(1) the infrastructure of the non-potable water transmission system has the capacity to meet the needs of current and future customers in the Service Area; (2) the existing non-potable water distribution system has the capacity to meet the needs of the current customers, but it will need to be expanded in order to meet the needs of future customers; and (3) distribution mains and appurtenances will be installed and connected to the transmission mains as land is developed into additional lots within the development areas. LWC also provided additional information regarding the steps it has already taken to remediate service interruptions, and agreed to report service interruptions lasting longer than twenty-four hours on an annual basis.<sup>13</sup>

Notwithstanding the additional information provided by LWC in its Reply SOP, the Settlement Agreement indicates that the Consumer Advocate has remaining concerns regarding LWC's assessment of any excess capacity of its system. However, "the Consumer Advocate recognizes that since the Company has not requested a return on or of rate base in the instant proceeding, the issues regarding excess capacity can be addressed in the Company's next rate proceeding or in whichever proceeding the Company seeks a return of and/or on rate base."<sup>14</sup> Regarding the Consumer Advocate's recommendation on service interruptions, the Parties agree in the Settlement Agreement that LWC will report service interruptions lasting longer than twenty-four hours on an annual basis.

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<sup>13</sup>See LWC's Reply SOP at 5-6.

<sup>14</sup>Settlement Agreement at 5.



The commission finds these agreements relating to LWC's ability to provide the Non-Potable Water Service to be reasonable and approves them. Issues regarding excess capacity may be addressed in LWC's next rate case; as discussed further below, LWC shall be required to annually report service interruptions lasting longer than twenty-four hours.

2.

LWC's Financial Fitness

In assessing LWC's financial fitness, the Consumer Advocate made the following statement:

LWC has no outstanding bonds or notes. Thus, there are no security agreements, mortgages, deeds or trusts, which may presently affect [LWC's] ownership and continued use of property used in its provision of the proposed regulated non-potable water service.<sup>15</sup>

Thus, the Consumer Advocate found that LWC possesses the necessary financial resources to be deemed to be financially fit to sustain the provision of the proposed Non-Potable Water Service.<sup>16</sup>

In its Reply SOP, LWC clarified that while it is true that LWC has no outstanding bonds or notes, there is a blanket mortgage in favor of Wells Fargo Bank ("Mortgagee"), which presently encumbers most of the lands owned by Castle & Cooke Resorts, LLC ("CCRL") or its affiliates on the island of Lanai, including but not limited to the property that will be used by LWC in its provision of the proposed regulated Non-Potable Water

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<sup>15</sup>Consumer Advocate's SOP at 7.

<sup>16</sup>See id. at 8.

Service ("Service-related Property"). However, LWC also stated that should the commission approve the Application, LWC will obtain all easements and licenses from its affiliates granting it the use of the Service-related Property, together with an appropriate consent and agreement from the Mortgagee to release its blanket mortgage to such easements and licenses and will use its best efforts to submit these documents to the commission within thirty days of receiving the commission's order approving the Application.<sup>17</sup>

In the Settlement Agreement, the Consumer Advocate acknowledged LWC's clarification that LWC has no outstanding bonds or notes, but that there is a blanket mortgage in favor of Mortgagee that presently encumbers most of the lands owned by CCRL or its affiliates on the island of Lanai, including, but not limited to, the Service-related Property. The Consumer Advocate also acknowledged LWC's representation that it will obtain all easements and licenses from its affiliates granting it the use of the Service-related Property, together with an appropriate consent and agreement from the Mortgagee to subordinate its blanket mortgage to such easements and licenses and will use its best efforts to submit these documents to the commission within thirty days of receiving the commission's order in the instant proceeding.<sup>18</sup>

The Parties recommend in the Settlement Agreement that the commission approve LWC's amended CPCN, but that approval be subject to the following conditions: (i) LWC must file copies

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<sup>17</sup>See LWC's Reply SOP at 4.

<sup>18</sup>See Settlement Agreement at 3-4.

of the grants of easements and licenses from its affiliates within thirty days; (ii) within thirty days of that submission, the Consumer Advocate may file comments, if any, on the documents submitted by LWC; and (iii) LWC's CPCN will remain in full force and effect, unless the commission finds that the documents filed by LWC do not provide sufficient evidence that LWC has the ability to provide the proposed utility service.<sup>19</sup>

Based on a review of the entire record, it appears that LWC is fit, willing, and able to provide the expanded Non-Potable Water Service in the Service Territory. The commission also finds the foregoing recommendations and conditions of the Parties to be reasonable. Accordingly, the commission will approve an amended CPCN for LWC, authorizing LWC to provide the Non-Potable Water Service, subject to the following conditions: (i) within thirty days of service of the commission's final Decision and Order in this proceeding, LWC shall file copies of the grants of easements and licenses from its affiliates, together with an appropriate consent and agreement from the Mortgagee to release its blanket mortgage to such easements and licenses; (ii) within thirty days of LWC's submission, the Consumer Advocate may file comments, if any, on LWC's documents; and (iii) LWC's CPCN will remain in full force and effect, unless the commission finds that

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<sup>19</sup>The Parties noted that these conditions are similar to those set forth in the commission's Proposed Decision and Order No. 23250, filed on February 7, 2007, in Docket No. 2006-0166 (MWR's Application for a CPCN and Approval of Initial Rates). They agreed that "these conditions are necessary since, when utility assets are potentially encumbered or used as collateral in a financing transaction, the utility company must obtain Commission approval or the assets must be released or otherwise excluded from being subject to encumbrance." Settlement Agreement at 4 n.6.

the documents filed by LWC do not provide sufficient evidence that LWC has the ability to provide the proposed utility service.

The commission conditions approval of the Application on another requirement. As noted above, LWC represents in the Application that its proposed rates are designed to partially recover the costs of providing the proposed Non-Potable Water Service. "However, if the actual operations do not provide sufficient revenues to cover the operating expenses, the additional funds needed to finance [LWC's] operations will be provided by one or more of [LWC's] affiliates."<sup>20</sup> LWC appears to make this representation on behalf of its affiliates. To insure that LWC's affiliates are, indeed, willing and prepared to cover LWC's operating expenses should it become necessary, the commission requires LWC to obtain written confirmation duly executed by each of LWC's affiliates that, as represented by LWC in the Application, LWC's affiliates are each committed to provide necessary funding to LWC, should LWC ever require it. LWC shall file these written confirmations from its affiliates within thirty days of service of the commission's final Decision and Order in this proceeding.

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<sup>20</sup>Application at 7.  
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B.

Reasonableness of LWC's Revenue Requirement Elements

1.

Customer Count

In its SOP, the Consumer Advocate noted that "it is unclear why the company suggests that only 17 [single-family] lots be reflected in the test year"<sup>21</sup> and recommended that LWC "explain why these customers will be served by LHI and not LWC, as LWC is currently establishing its utility service to the customers in the service territory, excluding the CAM golf course."<sup>22</sup>

In response to the Consumer Advocate's concerns, LWC provided additional information in its Reply SOP showing that the single-family subdivision lots identified as "completed" in LWC's response to CA-IR-16 refer to vacant lots developed and offered for sale, not house and lot packages. LWC explained that all but a few of the single-family lots developed in the proposed Service Area were offered for sale without homes (i.e., they were sold as vacant lots); and that out of the 53 single-family subdivision (vacant) lots that have been developed and offered for sale through 2008, only 17 of them have completed residences, are currently under construction, or are metered to receive non-potable water service. LWC stated that of the remaining

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<sup>21</sup>Consumer Advocate's SOP at 17.

<sup>22</sup>Id. at 18.

single-family lots, 26 are unsold, and 10 lots have been sold but remain vacant (unimproved).<sup>23</sup>

In the Settlement Agreement, given the additional information provided by LWC in its Reply SOP, the Consumer Advocate does not object to LWC's representation that it is currently servicing 17 single-family lots.<sup>24</sup> The commission likewise has no objections on this issue.

2.

Account No. 90500000

In its SOP, the Consumer Advocate raised an issue regarding Account No. 90600000, questioning why this meter is served by LHI.<sup>25</sup>

In response to the Consumer Advocate's concerns, LWC provided additional information in its Reply SOP showing that the meter the Consumer Advocate was referring to is actually identified as 90500000. LWC explained that Account No. 90500000 is identified on the diagram provided in LWC's response to CA-IR-12, and as shown there, the meter for Account No. 90500000 is above the "split" that separates the transmission line to the CAM golf course and the area serviced by LWC. LWC further stated that Account No. 90500000 is for the meter that measures the water used to fill CCRL developer's water trucks used to control construction dust, and that water coming out of this meter is

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<sup>23</sup>See LWC's Reply SOP at 7.

<sup>24</sup>See Settlement Agreement at 6.

<sup>25</sup>See Consumer Advocate's SOP at 17-18.

being provided by LHI to CCRL in the same way that LHI is providing water to CCRL to irrigate the golf course.<sup>26</sup>

In the Settlement Agreement, given the additional information provided by LWC in its Reply SOP, the Consumer Advocate does not object to LWC's representation that LHI is properly servicing Account No. 90500000.<sup>27</sup> The commission likewise has no objections on this issue.

3.

Depreciation

In its SOP, the Consumer Advocate disallowed LWC's inclusion of \$2,695 of depreciation expense in its revenue requirement for the Manele PVC Irrigation Pipe Replacement - Phase #1 (the "PVC Irrigation Pipe Replacement"),<sup>28</sup> recommending that LWC address the issue of the rebuttable presumption prior to being allowed to include any portion of its plant-in-service balance in rate base as well as depreciation expense associated with such plant costs in future rate proceedings.<sup>29</sup>

In response, LWC noted: (1) that it only included a rate base with a single asset that benefits the Single-Family lots, Multi-Family units, and the Manele Bay Home Owners Association users; and (2) that the PVC Irrigation Pipe

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<sup>26</sup>See LWC's Reply SOP at 7-8.

<sup>27</sup>See Settlement Agreement at 6.

<sup>28</sup>A detailed description of the PVC Irrigation Pipe Replacement is listed on Exhibit LWC T-307 including asset description, placed in service date, historical cost and depreciation life and method.

<sup>29</sup>See Consumer Advocate's SOP at 20-25.

Replacement is a replacement of an original fixed asset, such that LWC believes it is appropriate to include this asset in rate base and the rebuttable presumption does not apply.<sup>30</sup>

In their Settlement Agreement, the Parties agree not to include \$2,695 of depreciation expense in its revenue requirement for the PVC Irrigation Pipe Replacement.<sup>31</sup> Based on the record herein, the commission accepts this agreement as reasonable.

4.

Purchased Water

The Consumer Advocate did not object in its SOP to the amount of water purchased by LWC from LHI under the Purchase Agreement; however, it adjusted the purchased water rate by making adjustments to the following costs: (1) electricity as shown in Exhibit 3.1 to the Consumer Advocate's SOP; (2) fuel-diesel as shown in Exhibit 3.1 to the Consumer Advocate's SOP; (3) generator overhaul (excluded); and (4) depreciation (disallowed based upon the rebuttable presumption, discussed above), resulting in a rate of \$2.93 per 1,000 gallons per day ("gpd").<sup>32</sup>

In response, LWC did not take issue with the Consumer Advocate's adjustments to the electricity and fuel-diesel expenses and did not object to the adjustments for generator overhaul and depreciation. LWC, however, specifically noted that it did not agree with the Consumer Advocate's reasons for

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<sup>30</sup>See LWC's Reply SOP at 8-9.

<sup>31</sup>See Settlement Agreement at 7.

<sup>32</sup>See Consumer Advocate's SOP at 25-27.



adjusting generator overhaul and depreciation, as previously discussed. With regard to the Consumer Advocate's disallowance of the costs associated with the generator overhaul, LWC noted that this is a regular feature of the generator's maintenance and should be allowed to recover a portion of those costs during the test-year. Notwithstanding the above, LWC did not object to the Consumer Advocate's proposed purchase water rate, although it reserved the right to challenge the reasoning and adjustments in future proceedings. Moreover, LWC stated that it would amend the Purchase Agreement to conform to that rate if the commission approves LWC's Application.<sup>33</sup>

Based on the foregoing, in the Settlement Agreement, LWC and the Consumer Advocate agree to a purchase water rate of \$2.93 per 1,000 gpd, and if the commission approves the Application, LWC agrees to amend the Purchase Agreement to conform to that rate.<sup>34</sup> Based on the present record, this agreed-upon rate appears fair and reasonable. LWC shall amend the Purchase Agreement to reflect the rate of \$2.93 per 1,000 gpd.

5.

Amortization of Legal and Accounting Fees

As shown on Exhibit LWC T-311, LWC estimated a total of \$300,000 in legal and accounting fees associated with conducting this proceeding. Based on an amortization period of three years, the estimated expenses for the test year was \$100,000.

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<sup>33</sup>See LWC's Reply SOP at 9.

<sup>34</sup>See Settlement Agreement at 7.

The Consumer Advocate recalculated LWC's test year rate case expenses for its legal costs and fees, based upon the actual costs incurred to date, \$155,812.71, as demonstrated in the Consumer Advocate's SOP, Exhibit 3.2. The Consumer Advocate pointed out that the actual amount of \$155,812.71 is significantly less than the estimated total amount.<sup>35</sup>

LWC did not object to the Consumer Advocate's treatment of its amortization of the rate case, although it noted that it should be allowed to amortize all of its legal and accounting fees through the close of the docket and reserved the right to seek such treatment in future proceedings.<sup>36</sup>

In the Settlement Agreement, LWC and the Consumer Advocate agree to base LWC's test year rate case expenses for legal and accounting fees on the actual costs incurred to date, \$155,812.71,<sup>37</sup> which appears reasonable to the commission for this proceeding.

## 6.

### Test Year Contract Labor Estimate

LWC estimated its contract labor to be \$26,314 for the test year. Based on the Consumer Advocate's review, LWC's estimate was based on the work hours of its affiliate's employees that were significantly higher than historical work hours. As such, the Consumer Advocate adjusted LWC's test year contract

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<sup>35</sup>See Consumer Advocate's SOP at 27.

<sup>36</sup>See LWC's Reply SOP at 10.

<sup>37</sup>See Settlement Agreement at 7.

labor estimate to \$18,526, as shown in the Consumer Advocate's SOP, Exhibit 3.3.<sup>38</sup>

In its Reply SOP, LWC did not object to the Consumer Advocate's adjustment to the test year contract labor estimate.<sup>39</sup>

Accordingly, in the Settlement Agreement, LWC and the Consumer Advocate agree that LWC's test year contract labor estimate is \$18,526,<sup>40</sup> which the commission finds reasonable in this case.

C.

Proposed Rates

As set forth above, in the Application, LWC proposed rates for four categories of users: single-family users, multi-family users, home owners' association, and other users. LWC further proposed three-tiered rates for all categories of users: (1) Tier 1 for all consumption less than 1,000 gpd; (2) Tier 2 for all consumption between 1,000 and 2,500 gpd; and (3) Tier 3 for all consumption in excess of 2,500 gpd. LWC then proposed the following rates for all four categories of rate payers:

Tier 1 \$5.81

Tier 2 \$7.55

Tier 3 \$9.30<sup>41</sup>

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<sup>38</sup>See Consumer Advocate's SOP at 27.

<sup>39</sup>See LWC's Reply SOP at 10.

<sup>40</sup>See Settlement Agreement at 8.

<sup>41</sup>See Application, Exhibit K.

Consistent with the Consumer Advocate's concerns outlined above in Section II.B, the Consumer Advocate proposed its own rates in Exhibit 4.0 of its SOP. The Consumer Advocate explained that its proposed rates were based for the most part on the test year customer count and estimated water usage reflected in LWC's May 1, 2009 updated information provided in response to CA-IR-3, with an adjustment to the multi-family non-potable water usage. In addition, the Consumer Advocate based its proposed rates on the rate increase set forth in LWC's Application (i.e., \$255,254).<sup>42</sup> The Consumer Advocate proposed the following rates for all four categories of rate payers:

Tier 1 \$3.57

Tier 2 \$4.64

Tier 3 \$5.72<sup>43</sup>

In LWC's Reply SOP, in an effort to expedite the proceedings, subject to its comments made in response to the Consumer Advocate's concerns addressed in Section II.B, LWC did not object to the Consumer Advocate's proposed rates.<sup>44</sup>

As such, the Parties agree to the following rates for all four categories of users in the Settlement Agreement:

Tier 1 \$3.57

Tier 2 \$4.64

Tier 3 \$5.72<sup>45</sup>

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<sup>42</sup>See Consumer Advocate's SOP at 29.

<sup>43</sup>See Consumer Advocate's SOP, Exhibit 4.0.

<sup>44</sup>See LWC's Reply SOP at 6-7.

<sup>45</sup>See Settlement Agreement at 9.

The Parties also note that, although there is a remaining concern that the rates proposed in the Settlement Agreement are higher than LWC's potable water rates and the rate charged by MWR for R-1 reclaimed water, as discussed by the Consumer Advocate in its SOP, the Consumer Advocate believes that this issue can be addressed in: (1) LWC's next rate proceeding when the costs of both potable and non-potable water service can be reevaluated to determine whether the costs are properly allocated for each service; and (2) MWR's next rate proceeding when the rate charged for R-1 reclaimed water can be reviewed.

The commission finds that the Parties' agreed-upon rates are just and reasonable in this case. The commission acknowledges that LWC is not seeking compensatory rates, nor is LWC seeking to establish a rate base for ratemaking purposes in this docket. The commission acknowledges the Parties' agreement allowing reevaluation of LWC's non-potable water rates in connection with LWC's potable rates and MWR's R-1 reclaimed water rates in LWC's and MWR's next rate proceedings.

D.

#### Proposed Rules and Regulations

The Consumer Advocate recommended in its SOP that LWC's proposed Rules and Regulations be revised to add a definition for the term "Public Utilities Commission."<sup>46</sup> LWC agreed with this recommendation in its Reply SOP.<sup>47</sup> As a result, in the Settlement Agreement, the Parties agree that LWC's proposed Rules and

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<sup>46</sup>See Consumer Advocate's SOP at 30.

<sup>47</sup>See LWC's Reply SOP at 10.

Regulations will be revised to add a definition for the term "Public Utilities Commission,"<sup>48</sup> which the commission finds reasonable.

The Consumer Advocate also stated in its SOP that LWC should explain the basis for Paragraph 6 of Rule III of its proposed Rules and Regulations, which states: "The company will not accept responsibility to maintain pressure in its non-potable water mains."<sup>49</sup> In response to this concern, LWC stated in its Reply SOP that it believes that this rule is necessary for LWC's protection. LWC asserted that for over ten years, LWC has strived to provide reliable, uninterrupted non-potable water service to its customers in the Manele Bay resort area, and has demonstrated its commitment to this goal by investing hundreds of thousands of dollars in system upgrades and improvements (such as, replacing pressure reducing valves with new pressure breaking tanks and drilling new wells); however, as the system is expanded to accommodate new phases of development, or during peak consumption periods in drought conditions, some pressure fluctuation or service interruption is unavoidable despite the best efforts of LWC management and staff. LWC provided several examples where similar provisions have been approved by the commission for other water providers.<sup>50</sup>

Given the additional information provided by LWC in its Reply SOP, the Parties state in the Settlement Agreement that the Consumer Advocate does not object at this time to LWC's basis for

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<sup>48</sup>See Settlement Agreement at 9.

<sup>49</sup>Consumer Advocate's SOP at 31.

<sup>50</sup>See LWC's Reply SOP at 10-12.

including Paragraph 6 of Rule III in its proposed Rules and Regulations.<sup>51</sup> Based on the record, the commission has no objections at this time to Paragraph 6 of Rule III of LWC's proposed Rules and Regulations.

On June 16, 2009, the Parties jointly submitted a letter, attaching a revised Rule VII to LWC's proposed Rules and Regulations and clarifying LWC's proposed billing practices to address a potential ambiguity. LWC's Rule VII of its proposed Rules and Regulations originally stated, in part: "Meters will be read and bills rendered monthly, bi-monthly, or quarterly at the option of and as determined by the Company." However, elsewhere in the Application, LWC indicated that it would, upon receiving approval from the commission, implement a two-month billing cycle.<sup>52</sup> Therefore, "in order to clarify that LWC does intend to implement a two-month billing cycle," LWC submitted a revised Rule VII which states, in part: "Meters will be read and bills rendered on a bi-monthly (i.e., a two-month billing cycle) basis."<sup>53</sup> In addition, LWC clarified that user charges are based on the per day averages calculated by dividing the total volume of water used during the two-month billing cycle divided by the number of days in that billing cycle. The Consumer Advocate did not have any objections to LWC's proposed tariff revision and clarification.<sup>54</sup> Upon review, the commission accepts LWC's

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<sup>51</sup>See Settlement Agreement at 10.

<sup>52</sup>See Letter dated and filed on June 16, 2009, from the Parties to the commission, at 1 (citing examples of the potential ambiguities in the Application).

<sup>53</sup>Id.

<sup>54</sup>See id. at 2.

clarification to its rules and approves the agreed-upon revised proposed Rule VII in LWC's Rules and Regulations.

E.

LWC's Other Requests

As discussed above, LWC has requested commission approval to:

- (1) Transfer an undivided interest in LHI's constructed non-potable water system consisting of the Facility to LWC under the terms set forth in the Shared Asset Contribution Agreement;
- (2) Purchase bulk deliveries of non-potable water from LHI under the terms set forth in the Purchase Agreement; and
- (3) If applicable under HRS § 269-19.5(c), enter into easement and licensing agreements with its affiliates for use of real property to provide the Non-Potable Water Service.

LWC sought approval of its first request under HRS § 269-19, which provides that no public utility corporation shall "directly or indirectly, merge or consolidate with any other public utility without first having secured from the . . . commission an order authorizing it so to do." HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void." In addition, HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Under HRS § 269-7(a), the commission will



approve a proposed transaction if it is reasonable and consistent with the public interest.

As addressed above, the record reflects that LWC is fit, willing, and able to provide the proposed Non-Potable Water Service<sup>55</sup> and that in order for LWC to provide the service, the proposed transfer of ownership in the Facility from LHI to LWC is necessary. As such, the commission finds that the proposed transfer of the Facility from LHI to LWC under the terms of the Shared Asset Contribution Agreement is reasonable and in the public interest and should be approved under HRS §§ 269-7(a) and 269-19.

Regarding LWC's second request to purchase bulk deliveries of water under the Purchase Agreement, as discussed above, the Consumer Advocate did not object to the quantity of water purchased, but had concerns with LWC's proposed rate, and so proposed its own adjusted rate for purchased water. The commission finds the Parties' agreed-upon rate to be fair and reasonable,<sup>56</sup> and therefore, approves LWC's request to purchase water from LHI under the Purchase Agreement.

With respect to LWC's third request, the Consumer Advocate noted in its SOP that LWC did not submit any contract or agreements under HRS § 269-19.5(c), which provides:

No contract or agreement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or agreement for the purchase, sale, lease, furnishing or exchange of any real or personal property rights, including but not

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<sup>55</sup>See supra Section II.A.

<sup>56</sup>See supra Section II.C.

limited to real estate, improvements on land, equipment, leasehold interests, easements, rights-of-way, franchises, licenses, permits, trademarks, and copyrights, made or entered into after July 1, 1988, between a public utility and any affiliated interest shall be valid or effective unless and until the contract or agreement has been received by the commission. It shall be the duty of every public utility to file with the commission a verified copy of any contract or agreement with an affiliate having a face value of at least \$300,000, or a verified summary of any unwritten contract or agreement having a face value of at least \$300,000 within forty-five days of the effective date of the contract or agreement.

Accordingly, the Consumer Advocate stated that it was "unable to presently state a position on [LWC's] request for approval of any easement and licenses necessary of its affiliate"<sup>57</sup> and recommended that LWC be directed to file such contracts or agreements with the commission as they are developed.

In response, LWC stated in its Reply SOP that upon approval of the Application, LWC will submit all pertinent easements and licenses to the commission for its review within thirty days of receipt of the approval order.<sup>58</sup> The Consumer Advocate agreed with this proposal in the Settlement Agreement.<sup>59</sup>

As discussed in Section II.A.2 in connection with LWC's financial fitness, the commission finds the Parties' stipulated filing requirement of LWC's easement and license agreements with its affiliates, together with an appropriate consent and agreement from the Mortgagee to release its blanket mortgage to such easements and licenses, to be reasonable, subject to the

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<sup>57</sup>Consumer Advocate's SOP at 32.

<sup>58</sup>See LWC's Reply SOP at 12.

<sup>59</sup>See Settlement Agreement at 10.

same conditions discussed above. Thus, LWC shall obtain and file all pertinent easements and licenses for the commission's review within thirty days of receipt of the commission's final Decision and Order in this docket. The Consumer Advocate may file comments, if any, on LWC's documents. LWC's CPCN will remain in full force and effect, unless the commission finds that the documents filed by LWC do not provide sufficient evidence that LWC has the ability to provide the proposed utility service.

F.

Concerns Raised at the Public Hearing

As mentioned above, during the public hearing, issues were raised relating to the quality of the non-potable water, leaks, accuracy of meters and reliability of service provided. In response to these concerns, the Consumer Advocate recommended that LWC annually report to the commission and the Consumer Advocate:

- a. a summary of complaints received by LWC, including the date of the complaint, the nature of the complaint, and any action taken to address the complaint;
- b. a summary of service interruptions lasting longer than twenty-four hours, including the date of the interruption, the reason for the interruption and the actions taken to resolve the interruption;
- c. any updates to actions that LWC plans to take or has taken to address the concerns expressed in the public hearing regarding:
  - Quality of the non-potable water;
  - Leakage;

- Meter inaccuracies;
- Reliability of LWC's system; and
- Accurate identification of customers meters.<sup>60</sup>

The Consumer Advocate recommended that this annual reporting continue until LWC's next rate case, anticipated in approximately three years.

In response to the Consumer Advocate's concerns, in its Reply SOP, LWC outlined various steps it claimed it is proactively taking to address the issues raised during the public hearing and agreed to the Consumer Advocate's proposal.<sup>61</sup>

In the Settlement Agreement, LWC and the Consumer Advocate agree that LWC will file with the commission and the Consumer Advocate annually the information in a., b., and c., above.<sup>62</sup> The agreed-upon reporting requirements appear to be a sound measure responding to the concerns raised at the public hearing, and should be approved. The commission adds, however, a further requirement that LWC's annual reports be filed no later than July 1 of each year until LWC's next rate case.

### III.

#### Summary of Findings and Conclusions

The Parties' Settlement Agreement results from arms-length negotiations, involving "give and take" on both sides. The commission finds that the Settlement Agreement, taken

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<sup>60</sup>See Consumer Advocate's SOP at 34-35.

<sup>61</sup>See LWC's Reply SOP at 13.

<sup>62</sup>See Settlement Agreement at 11.

as a whole, appears just and reasonable. Accordingly, for purposes of this proceeding, the commission approves the Parties' Settlement Agreement, consistent with the terms of this Proposed Decision and Order. Nonetheless, the commission's approval of the Parties' Settlement Agreement, and of the methodologies used herein, may not be cited as precedent by any parties in any future commission proceeding.

In sum, the commission finds and concludes:

1. LWC should be allowed to amend its CPCN authorizing expansion of its authority to include the provision of Non-Potable Water Service limited to the Service Area conditioned on the filing requirements discussed above.

2. The agreed-upon rates in the Settlement Agreement are fair and reasonable.

3. LWC's Rules and Regulations, as modified by the Consumer Advocate's recommendation with respect to the definition of "Public Utilities Commission," and as further revised by the Parties in their joint letter submitted on June 16, 2009, are reasonable.

4. LWC is entitled to total operating revenues of \$255,479, as shown in the attached Exhibit A.

5. The requested disposition of the Facility and related plant and equipment from LHI to LWC is just and reasonable under HRS §§ 269-7(a) and 269-19.

6. The requested purchase of bulk deliveries of non-potable water from LHI under the terms set forth in the Purchase Agreement is reasonable.

#### IV.

##### Acceptance or Non-Acceptance

Consistent with HRS § 269-16(f)(3), within ten days from the date of this Proposed Decision and Order, each of the Parties shall notify the commission as to whether it:<sup>63</sup>

1. Accepts, in toto, the Proposed Decision and Order. If the Parties accept the Proposed Decision and Order, they "shall not be entitled to a contested case hearing, and [HRS] section 269-15.5 shall not apply." HRS § 269-16(f)(3).

2. Does not accept, in whole or in part, the Proposed Decision and Order. If so, said Party shall give notice of its objection or non-acceptance and set forth the basis for its objection or non-acceptance. Id. Moreover, the Party's objection or non-acceptance shall be based on the evidence and information contained in the current docket record, i.e., the materials available to the commission at the time of its issuance of the Proposed Decision and Order.

Any Party that does not accept the Proposed Decision and Order "shall be entitled to a contested case hearing; provided that the [P]arties to the proceeding may waive the contested case hearing." Id. The commission shall make every effort to complete its deliberations and issue its Decision and Order by September 26, 2009. Id.

The underlying purpose of HRS § 269-16(f) is to expedite the ratemaking process for public utilities with annual gross revenues of less than \$2 million. Consistent thereto, the

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<sup>63</sup>This deadline is consistent with the deadline to move for reconsideration of a commission decision or order. See HAR § 6-61-137.

commission has completed its review and timely issues this Proposed Decision and Order. Nonetheless, the commission makes it clear that if it is required to issue a Decision and Order due to the non-acceptance of the Proposed Decision and Order by one or both of the Parties, the commission is free to review anew the entire docket and all issues therein.

## V.

### Orders

1. The Parties' Settlement Agreement, filed on May 29, 2009, is approved, consistent with the terms of this Proposed Decision and Order.

2. LWC may amend its CPCN, authorizing it to provide the Non-Potable Water Service in the Service Area conditioned on the following: (i) LWC shall obtain and must file copies of the grants of easements and licenses from its affiliates and an appropriate consent and agreement from the Mortgagee to release the blanket mortgage to such easements and licenses discussed above within thirty days of service of the commission's final Decision and Order in this docket; (ii) within thirty days of that submission, the Consumer Advocate may file comments, if any, on the documents submitted by LWC; (iii) within thirty days of the date of service of the commission's final Decision and Order in this proceeding, LWC shall file written confirmations duly executed by each of its affiliates that they will provide additional funds needed to finance LWC's operations in the event that LWC's actual operations do not provide sufficient revenues to cover its operating expenses; and (iv) LWC's CPCN will remain

in full force and effect, unless the commission finds that the documents filed by LWC do not provide sufficient evidence that LWC has the ability to provide the proposed utility service.

3. The agreed-upon rates in the Settlement Agreement are approved.

4. LWC is entitled to total operating revenues of \$255,479, as shown in the attached Exhibit A.

5. LWC's request to transfer the Facility and related plant and equipment from LHI to LWC is approved.

6. LWC's request to purchase bulk deliveries of non-potable water from LHI under the terms set forth in the Purchase Agreement, according to the agreed-upon rate discussed herein, is approved.

7. By July 1 of each year until LWC's next rate case, LWC shall file annual reports addressing the agreed-upon topics in the Parties' Settlement Agreement and outlined above in Section II.F.

8. LWC's Rules and Regulations, as modified by the Consumer Advocate's recommendation with respect to the definition of "Public Utilities Commission," and as further revised by the Parties in their joint letter submitted on June 16, 2009, are approved.

9. LWC shall promptly file its revised tariff sheets and rates schedules for the commission's review and approval, which implement the tariff changes and increases in rates and charges authorized by this Proposed Decision and Order, with copies served upon the Consumer Advocate. LWC's tariff changes



and increases in its rates and charges shall take effect upon the commission's review and approval of said filing.

10. Within ten days of the date of this Proposed Decision and Order, each of the Parties shall notify the commission as to whether it accepts, in toto, or does not accept, in whole or in part, this Proposed Decision and Order, consistent with Section IV, above. A Party's objection or non-acceptance shall be based on the evidence and information contained in the current docket record.

11. The failure to comply with any of the requirements noted in the ordering paragraphs above may constitute cause to void this Proposed Decision and Order, and may result in further regulatory action as authorized by State law.

DONE at Honolulu, Hawaii JUN 26 2009.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

APPROVED AS TO FORM:

By:   
Leslie H. Kondo, Commissioner

  
Kaiulani Kidani Shinsato  
Commission Counsel

2008-0322.ps

Docket No. 2008-0322  
Lanai Water Company - Non-Potable Operations  
Results of Operations  
Test Year Ending December 31, 2009

	<u>Amount</u>
Operating Revenues	
Non-potable Water Revenues	\$251,819
Service Charges	3,660
Total Operating Revenues	<u>255,479</u>
Cost of Operations	
Purchased Water	208,636
Depreciation	0
Contract Labor	18,526
Amortization of Rate Case	51,938
Bad Debt Expense	7,889
Community Education	22,950
Total O&M Expenses	<u>309,939</u>
Taxes, Other Than Income	<u>16,312</u>
Total Operating Expenses	<u>326,251</u>
Net Operating Income (loss) before Income Taxes	<u>(70,772)</u>
Income Taxes	
Net Operating Income (Loss)	(\$70,772)
Average Rate Base	0
Rate of Return	0.00%

Docket No. 2008-0322  
Lanai Water Company - Non-Potable Operations  
Taxes Other Than Income Taxes  
Test Year Ending December 31, 2009

<u>Revenue Taxes</u>	<u>Revenues at Proposed Rates</u>	<u>Tax Rates</u>	<u>Taxes at Proposed Rates</u>
Public Service Company Tax	\$255,479	5.885%	\$15,035
Public Utility Fee	255,479	0.500%	1,277
Total Revenue Taxes			16,312
Other Taxes			0
Total Taxes Other Than Income Taxes			<u>\$16,312</u>

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
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DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
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